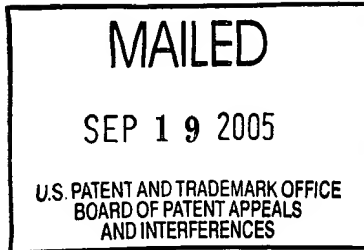


UNITED STATES PATENT AND TRADEMARK OFFICE



BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte NORISHIGE KAKUNO

Application 09/624,224

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received electronically at the Board of Patent Appeals and Interferences on August 26, 2005. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being electronically returned to the examiner. The matters requiring attention prior to docketing are identified below:

An examination of the Image File Wrapper (IFW) reveals that appellant filed a Reply Brief under 37 CFR § 41.41 on August 4, 2005. On August 23, 2005, the examiner mailed an Office communication which includes a rebuttal of the position set forth in the Reply Brief. Section 41.43 reads as follows:

§ 41.43 Examiner's response to reply brief.

(a)(1) After receipt of a reply brief in compliance with § 41.41, the primary examiner must acknowledge receipt and entry of the reply brief. In addition the primary examiner may withdraw the final rejection and reopen prosecution or may furnish a supplemental examiner's answer responding to any new issue raised in the reply brief.

(2) A supplemental examiner's answer responding to a reply brief may not include a new ground of rejection.

(b) If a supplemental examiner's answer is furnished by the examiner, appellant may file another reply brief under § 41.41 to any supplemental examiner's answer within two months from the date of the supplemental examiner's answer.

(c) Extensions of time under § 1.136(a) of this title for patent applications are not applicable to the time period set forth in this section. See § 1.136(b) of this title for extensions of time to reply for patent applications.

The examiner must follow the guidelines set forth in training material entitled "Rules of Practice Before the Board of Patent Appeals and Interferences, Final Rule," located at the following URL:

www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html

It should be noted that in accordance with § 41.43, the primary examiner may withdraw the final rejection and reopen prosecution or may furnish a Supplemental Examiner's Answer responding to any new issue raised in the Reply Brief. A Supplemental Examiner's Answer must be signed by a Technology Center Director or designee and may not include a new ground of rejection. If a Supplemental Examiner's Answer is furnished by the examiner, the appellant is permitted to file another Reply Brief under § 41.41 within two months from the date of the Supplemental Examiner's Answer.


Accordingly,

ORDERED that the application is returned to the examiner:

1. for a proper response to the Reply Brief filed August 5, 2005; and
2. for such further action as may be appropriate

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: _____


CRAIG R. FEINBERG
Program and Resource Administrator
(571) 272-9797

CRF/psb

Application 09/624,224

Sughrue Mion Zinn MacPeak & Seas PLLC
2100 Pennsylvania Avenue, N.W.
Washington, D.C. 20037-3202